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In The
Supreme Court of the United States
October Term, 1996

William STRATE, Associate Tribal Judge,
Tribal Court of the Three Affiliated Tribes
of the Fort Berthold Indian Reservation, *et al.*,

Petitioners,

v.

A-1 CONTRACTORS and Lyle Stockert,

Respondents.

On Writ Of Certiorari To The United States Court
Of Appeals For The Eighth Circuit

**BRIEF OF AMICI CURIAE SHAKOPEE
MDEWAKANTON SIOUX (DAKOTA) COMMUNITY,
SISSETON-WAHPETON SIOUX TRIBE, SPIRIT
LAKE SIOUX TRIBE AND RED LAKE BAND OF
CHIPPEWA IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICI CURIAE SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY, SISSETON-WAHPETON SIOUX TRIBE, SPIRIT LAKE SIOUX TRIBE AND RED LAKE BAND OF CHIPPEWA IN SUPPORT OF PETITIONERS

Pursuant to Supreme Court Rule 37.2, the above-listed American Indian tribes file this brief in support of the Petitioners. Letters of consent from counsel for all parties to the proceeding have been filed with the Clerk.

Shakopee Mdewakanton Sioux (Dakota) Community

The Shakopee Mdewakanton Sioux (Dakota) Community is a federally recognized Indian tribe located near the Twin Cities in Minnesota. It was organized pursuant to the Indian Reorganization Act ("IRA") through a Constitution approved by the Secretary of the Interior in 1969.

The Community has had a tribal court since 1988. Its jurisdiction has been expanded on a number of occasions since its creation, and the tribal court now exercises general civil jurisdiction over matters arising on Community lands and involving Community members and other persons who come in contact with the Community. Because the Community is located very near an urban area, and because it operates a casino with a high volume of non-member visitors, the Eighth Circuit decision in this case hinders the Community's ability to control and determine what conduct is acceptable within its territory.

Red Lake Band of Chippewa

The Red Lake Band of Chippewa Indians is a federally recognized Indian tribe located in north central

Minnesota with a tribal population of over 8,000 members. The Red Lake Band is not organized under the IRA, and operates under a Constitution enacted by the Band and approved by the Secretary of the Interior in 1958.

The Band has had a tribal court since 1884, although the court was a "C.F.R." court subject to federal regulations until 1988. The Band's current tribal court was established by, and is wholly governed by, tribal law, without regard to the federal regulations in 25 C.F.R. Part 11. The Band has an extensive tribal code which governs matters including such diverse areas as criminal jurisdiction, probate, commitment, motor vehicle registration and highway traffic regulation. The Eighth Circuit's decision in this case seriously undermines the ability of the Band's tribal court to enforce the Band's laws regulating the conduct of all persons within its reservation boundaries.

Sisseton-Wahpeton Sioux Tribe

The Sisseton-Wahpeton Sioux Tribe is a federally recognized Indian tribe located in northeastern South Dakota and southeastern North Dakota, with a tribal population of over 10,000 members. The Tribe is situated on the Lake Traverse Reservation, as established by the treaty of February 19, 1867.

The Tribe created its tribal court in 1968, and has expanded and refined the court's jurisdiction throughout the years. Under the Tribe's statutory and case law, however, it has civil jurisdiction over its territory, its members, and those who enter its territory. The Eighth Circuit's decision in this case jeopardizes the Tribe's

ability to govern within the Tribe's reservation boundaries by adjudicating disputes arising there, including those that involve nonmembers of the Tribe.

Spirit Lake Sioux Tribe

The Spirit Lake Sioux Tribe (formerly known as the Devil's Lake Sioux Tribe) is a federally recognized tribe located in north central North Dakota. The Tribe operates under a Constitution enacted by the Tribe in 1944 and approved by the Secretary of the Interior in 1946.

The Tribe has a longstanding tribal court that exercises general civil jurisdiction. It was created to settle disputes arising on the Tribe's reservation. The Eighth Circuit's decision in this case interferes with the Tribe's legitimate exercise of its jurisdiction to adjudicate disputes arising on its reservation, all of which affect its health and welfare, and its political integrity.

SUMMARY OF ARGUMENT

Amici agree with Petitioners here that this Court's decision in *State of Montana v. United States*, 450 U.S. 544 (1981), does not apply to the present matter. If this Court determines, however, that *Montana* does apply to this matter, the Court should find that the Tribal Court of the Three Affiliated Tribes of the Fort Berthold Indian Reservation ("Tribal Court") has civil jurisdiction over the underlying dispute here because the conduct at issue falls within the exceptions to the general rule in *Montana*. *Montana*, 450 U.S. at 565-66.

In *Montana*, this Court held that a tribe retains its civil authority over the conduct of non-Indians on the lands within its reservation when "that conduct threatens or has some direct effect on the political integrity, economic security, or health or welfare of the tribe." *Id.* The conduct at issue here – tortious driving on the Fort Berthold Indian Reservation (the "Reservation") – has a direct effect on the health and welfare of the Three Affiliated Tribes of the Fort Berthold Indian Reservation (the "Tribe") and the political integrity of the Tribe.

Unsafe conduct such as negligent driving has the potential to damage property on the Reservation or cause injury or death to people on the Reservation. Such hazardous activity threatens and has a direct effect on the health and welfare of the Tribe. The Tribal Court's ability to adjudicate claims arising out of dangerous conduct on the Reservation should not depend on whether the individual harmed by the conduct is a tribal member. Moreover, in the present case, the victim of the accident is the mother of tribal members. *A-1 Contractors v. Strate*, 76 F.3d 930, 932 (8th Cir. 1996).

The conduct at issue here is also within the *Montana* exceptions because it threatens or has a direct effect on the political integrity of the Tribe. *See Montana*, 450 U.S. at 565-66. If the Tribal Court, an arm of the Tribe's sovereign government, cannot adjudicate matters involving common law tortious conduct within the boundaries of the Reservation, the Tribal Court's power and authority are considerably weakened.

The conduct at issue here also threatens the Tribe's legislative authority, and hence the political integrity of

the Tribe. The Tribe has adopted a tribal code which outlines the civil jurisdiction of the Tribal Court and provides that tribal law and custom is controlling precedent for torts occurring on the Reservation. *A-1 Contractors*, 76 F.3d at 943 (Beam, J., dissenting). If the conduct at issue here is allowed to continue in the absence of Tribal Court jurisdiction, the legislative authority and political integrity of the Tribe will be impaired.

Tribal courts are a significant component of tribal sovereignty. This Court has long recognized the federal government's policy of encouraging tribal self-government. *See, e.g., Worcester v. The State of Georgia*, 6 Pet. 515, 537, 8 L. Ed. 483 (1832). This Court has held that "[t]ribal courts play a vital role in tribal self-government, and the Federal Government has consistently encouraged their development." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14 (1987). This Court has also recognized that if "the authority of the tribal courts over Reservation affairs" is undermined, tribal self-government is infringed upon. *Williams v. Lee*, 358 U.S. 217, 223 (1959). The Eighth Circuit's decision here diminished the authority of the Tribal Court and therefore threatened the political integrity of the Tribe.

The Tribe's authority over lands within the Reservation is another important aspect of tribal sovereignty. Tribes, although not full sovereigns, remain vested with some inherent sovereign powers. The Eighth Circuit concluded, without supporting analysis, that authority over the tortious conduct of nonmembers on the Reservation was among the attributes of sovereignty lost by the Tribe pursuant to the Tribe's dependent status. In so concluding, the Eighth Circuit ignored the fact that the civil

authority of tribes over the territory within their reservations has historically been an integral aspect of tribal sovereignty. *United States v. Mazurie*, 419 U.S. 544, 557 (1975); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 142 (1980). "Tribal authority over the activities of non-Indians on reservation lands" continues to be an "important part of tribal sovereignty." *LaPlante*, 480 U.S. at 18.

The Eighth Circuit's determination that the conduct at issue here does not threaten or directly affect the health, welfare or political integrity of the Tribe was erroneous and should be reversed.

ARGUMENT

I. IF THE COURT DETERMINES THAT *STATE OF MONTANA V. UNITED STATES* APPLIES TO THIS MATTER, THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION RETAIN INHERENT POWER TO EXERCISE CIVIL AUTHORITY OVER THE CONDUCT OF NON-MEMBERS ON LANDS WITHIN THE RESERVATION BECAUSE THE CONDUCT AT ISSUE THREATENS OR HAS SOME DIRECT EFFECT ON THE HEALTH AND WELFARE AND POLITICAL INTEGRITY OF THE TRIBE

The United States Court of Appeals for the Eighth Circuit determined that this Court's decision in *State of Montana v. United States*, 450 U.S. 544 (1981), controls here and that because the underlying action was a simple automobile negligence matter involving two individuals who were not members of the Tribe, the exceptions described in *Montana*, 450 U.S. at 565-566, do not apply.

Amici agree with Petitioners here that this Court's decision in *Montana* is inapplicable to this matter. However, if this Court determines that *Montana* provides the rule of law here, the Court should reverse the judgment of the Eighth Circuit and hold that the Tribal Court has jurisdiction over the underlying dispute, because the conduct at issue falls within the *Montana* exceptions.

In *Montana*, this Court determined that the Crow Tribe of Montana did not possess inherent tribal authority to regulate hunting and fishing by non-Indians on lands within its reservation owned in fee simple by non-Indians, but recognized that,

A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Montana, 450 U.S. at 566. The underlying issue in this case is whether a driver operated his motor vehicle tortiously while traveling on the Reservation. Despite the fact that this matter involves dangerous conduct within the boundaries of the Reservation, the Eighth Circuit held that "this case has nothing to do with the Indian tribe's ability to govern its own affairs under tribal laws and customs. It deals only with the conduct of non-Indians and the tribe's asserted ability to exercise plenary judicial authority over a decidedly non-tribal matter." *A-1 Contractors v. Strate*, 76 F.3d 930, 940 (8th Cir. 1996). The Eighth Circuit's view of what constitutes a tribal matter is unduly narrow and works an injury on the sovereignty of the Tribe.

A. The Conduct Directly Affects Tribal Health And Welfare

The "conduct" at issue here is the allegedly tortious driving of one of the respondents. Unsafe conduct of this sort has the potential to damage property or injure or kill people on the Reservation, whether those people are tribal members, nonmember residents, or visitors to the Reservation. Hazardous activity that is conducted on the Reservation implicates the tribal government's interest in the "health or welfare of the tribe." *Montana*, 450 U.S. at 566.

The Eighth Circuit's decision establishes a rule whereby a nonmember driving negligently on the Reservation who hits and injures a tribal member is subject to Tribal Court jurisdiction, but a nonmember driving negligently on the Reservation who hits and injures a nonmember escapes the jurisdiction of the Tribal Court. The conduct at issue – negligent driving – is the same in each case, yet the Tribal Court's authority to address the conduct is determined by the status of the victim. The Eighth Circuit's interpretation of this Court's use of the word "conduct" in the *Montana* decision is improperly narrow and does not comport with the definition of the word in normal usage. "Conduct" is defined as "personal behavior; way of acting; bearing or deportment." *The Random House Dictionary of the English Language* 426 (2d Unabridged Ed. 1987). The behavior at issue in this matter is hazardous and therefore affects the health and welfare of the Tribe. The Tribal Court's ability to adjudicate claims

arising out of dangerous conduct on the Reservation should not be dependent on the identity of the victim.¹

Additionally, in the present case, it defies logic to suggest that there is no effect on the welfare of the Tribe when the victim of the car accident here is the mother of tribal members. See *A-1 Contractors*, 76 F.3d at 932. The Eighth Circuit's decision establishes an arbitrary construct with respect to what constitutes a "tribal interest" under *Montana*.

B. The Conduct Directly Affects The Political Integrity Of The Tribe

The conduct at issue here also directly affects the political integrity of the Tribe. Conduct with the potential to harm, such as tortious driving, is of concern to all governmental entities. Additionally, every government has an interest in maintaining free and safe access to the public roads passing through its territory. If the Tribal Court cannot adjudicate matters involving common law tortious conduct within the boundaries of the Reservation, the Tribal Court's power and authority are considerably weakened. This evisceration of Tribal Court jurisdiction is a threat to the political integrity of the Tribe.

¹ This Court has recognized that "checkerboard jurisdiction" based on the ownership of land within reservation boundaries is impractical. *Seymour v. Superintendent of Washington State Penitentiary*, 368 U.S. 351, 358 (1962). The same can be said for the checkerboard jurisdiction based on the status of the victim of tortious conduct that results from the Eighth Circuit's decision.

The conduct at issue here is also a threat to the political integrity of the Tribe because the Tribe has adopted a tribal code which establishes civil Tribal Court jurisdiction within the exterior boundaries of the Reservation. This tribal code provides that tribal law and custom is controlling precedent for torts occurring within the boundaries of the Reservation. *See A-1 Contractors*, 76 F.3d at 943 (Beam, J., dissenting). If the underlying conduct at issue in this matter is allowed to continue on the Reservation with impunity in the absence of Tribal Court jurisdiction, the Tribe's political integrity will be impaired because the legislative mandate of the Tribe establishing the jurisdiction of the Tribal Court will be rendered a nullity.

1. Tribal Courts Are A Significant Component Of Tribal Sovereignty

Since as early as 1819, the federal government has sought to preserve the Indian nations. *See Worcester v. The State of Georgia*, 6 Pet. 515, 557, 8 L. Ed. 483 (1832) (discussing 1819 federal legislation enacted "for the purpose of providing against the further decline and final extinction of the Indian tribes . . ."). This Court has repeatedly recognized the federal government's longstanding policy of encouraging tribal self-government. In *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14-15 (1987), this Court noted that "[t]ribal courts play a vital role in tribal self-government, and the Federal Government has consistently encouraged their development." (Citation omitted.) The Eighth Circuit declined to apply the *LaPlante* decision here because that case "only established an exhaustion

rule." *A-1 Contractors*, 76 F.3d at 936. The Eighth Circuit similarly discounted the relevance of *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985), by deeming it merely "an exhaustion case." *A-1 Contractors*, 76 F.3d at 936. By dismissing in a wholesale manner the relevance of these decisions to the matter at hand, the Eighth Circuit neglected the wealth of learning on the federal policy favoring tribal self-determination and self-government underlying those decisions.

Congress has repeatedly reaffirmed this strong federal policy.² In 1993 Congress passed the Indian Tribal

² *See, e.g.*, Indian Tribal Justice Act, 25 U.S.C. § 3601, et seq.; Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450, et seq. (committing the United States to supporting and assisting Indian tribes in "the development of strong and stable tribal governments"); Indian Financing Act of 1974, 25 U.S.C. § 1451, et seq. (declaring the policy of Congress to help develop and utilize Indian resources "to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources"); Tribally Controlled Schools Act of 1988, 25 U.S.C. § 2501, et seq. (committing the federal government to "the establishment of a meaningful Indian self-determination policy for education"); Indian Gaming Regulatory Act, 25 U.S.C. § 2701, et seq. (declaring that a principal goal of federal Indian policy is "to promote tribal economic development, tribal self-sufficiency, and strong tribal government"); Native American Languages Act, 25 U.S.C. § 2901, et seq. (recognizing "the United States policy of self-determination for Native Americans"); Indian Employment, Training and Related Services Demonstration Act of 1992, 25 U.S.C. § 3401, et seq. (advocating the provision of employment, training and related services by Indian tribal governments in order "to serve tribally-determined goals consistent with the policy of self-determination"); American Indian Agricultural Resource Management Act, 25 U.S.C. § 3701, et seq. (promoting

Justice Act, 25 U.S.C. § 3601, et seq., dedicated to furthering and strengthening tribal courts. In enacting this statute, Congress found, in part, that "tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments" 25 U.S.C. § 3601(5).³ This Congressional finding confirms

"the self-determination of Indian tribes by providing for the management of Indian agricultural lands and related renewable resources"); Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. § 4001, et seq. (promoting tribal management of tribal funds in order to "demonstrate how the principles of self-determination can work with respect to the management of such trust funds").

³ The full Congressional findings made in the Indian Tribal Justice Act demonstrate the strength of the federal policy favoring tribal self-government: "(1) there is a government-to-government relationship between the United States and each Indian tribe; (2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government; (3) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes; (4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems; (5) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments; (6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights; [and] (7) traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes" 25 U.S.C. § 3601.

The Eighth Circuit decision here undermines many of these Congressional purposes. For example, by permitting

that the vitality of tribal courts is integral to both the health and welfare of tribes and to tribes' political integrity – precisely the tribal interests that this Court has recognized as justifying exceptions from the *Montana* rule. *Montana*, 450 U.S. at 565-66.

This Court has acknowledged that "[o]ur cases have often recognized that Congress is committed to a policy of supporting tribal self-government and self-determination." *National Farmers Union Ins. Cos.*, 471 U.S. at 856. See also *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 138 n. 5 (1982); *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, 476 U.S. 877, 890 (1986) (referring to "Congress' jealous regard for Indian self-governance"). In deciding whether state court jurisdiction was available to a non-Indian who had sued a tribal member, this Court stated that to "undermine the authority of the tribal courts over Reservation affairs . . . would infringe on the right of the Indians to govern themselves." *Williams v. Lee*, 358 U.S. 217, 223 (1959). Although the issue presented in *Williams* was not identical to that here, the underlying principle remains the same – any reduction of the Tribal Court's authority over claims arising on the

nonmembers to engage in tortious conduct on the Reservation, the Eighth Circuit decision fails to protect the Tribe's sovereignty. The effect of the Eighth Circuit decision will impede the Tribe's ability to establish its own justice system and to define the jurisdiction of, and applicable precedent to be used in, that justice system. Finally, as discussed above, by permitting negligent drivers to travel the Reservation with impunity, the decision impedes the Tribal Court from ensuring the health, safety and political integrity of the Tribe.

Reservation that is worked by an outside entity weakens the Tribal Court and impinges on the Tribe's sovereignty.

It is well-established by Congressional action and this Court's decisions that maintaining the integrity of Tribal Courts is an important component of furthering the federal policy of supporting tribal self-government. The Eighth Circuit decision, which constrains the jurisdiction of the Tribal Court granted by the Tribe and allows non-members to engage in tortious activity on the Reservation outside the reach of the Tribal Court, is at odds with this important federal policy.

2. The Tribe's Authority Over Lands Within Its Reservation Is An Important Aspect Of Tribal Sovereignty

The Eighth Circuit determined that the matter at issue here did not have a direct effect on the political integrity of the Tribe because tribes are "limited sovereigns," and therefore cannot exercise the rights of "full sovereign[s]." *A-1 Contractors*, 76 F.3d at 940. The Eighth Circuit concluded, without analysis, that the Tribal Court's authority over tortious conduct of nonmembers on the Reservation was among the facets of sovereignty curtailed when the Tribe acquiesced to the authority of the United States. A decision such as this one, which has a direct effect on the political integrity of the Tribe by diminishing an important tribal institution, the Tribal Court, warranted more than the cursory consideration allotted by the Eighth Circuit.

Although it is true that this Court's precedents hold that the sovereignty of the Tribe, like that of all Indian

tribes, was necessarily diminished as a result of the Tribe's dependent status on the United States, "tribal civil jurisdiction over non-Indians on reservation lands is not an aspect of tribal sovereignty necessarily divested by reason of the tribes' incorporation within the dominant society." *Brendale v. Confederated Tribes and Bands of Yakima Indian Nation*, 492 U.S. 408, 454 (1989) (Blackmun, J., concurring and dissenting).

Tribal powers are not implicitly divested by virtue of the tribes' dependent status. This Court has found such a divestiture in cases where the exercise of tribal sovereignty would be inconsistent with the overriding interests of the National Government, as when the tribes seek to engage in foreign relations, alienate their lands to non-Indians without federal consent, or prosecute non-Indians in tribal courts which do not accord the full protections of the Bill of Rights.

State of Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134, 153-54 (1980) (holding that tribes have the authority to tax non-Indians purchasing cigarettes on the reservation).

The civil authority of tribes over the territory within their reservations has historically been an integral aspect of tribal sovereignty. This Court has long recognized that "Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory." *United States v. Mazurie*, 419 U.S. 544, 557 (1975) (emphasis added)⁴; see also *White Mountain Apache Tribe*

⁴ The *Mazurie* case addressed the issue of a tribe's authority to regulate conduct presenting potential public health and

v. Bracker, 448 U.S. 136, 142 (1980). This Court's pronouncements on this issue go back to 1832, when Chief Justice Marshall stated that,

From the commencement of our government Congress has passed acts to regulate trade and intercourse with the Indians; which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States.

Worcester, 6 Pet. at 556-57.

The issue in *Worcester* was whether the state of Georgia had the power to enact laws rendering tribal self-government illegal and otherwise impinging on the authority of the Cherokee Tribe over its own reservation. In determining that Georgia lacked the power to so intrude on the jurisdiction of the Cherokees, the Court made a close examination of the nature of the Cherokees' sovereign status, recognizing that,

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the

safety hazards – the sale of alcohol on the reservation. Like the conduct at issue in the present case, the sale of liquor is the type of commonplace activity regularly and commonly addressed by governments.

undisputed possessors of the soil from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed

Id. at 559. The Court held that "The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force" *Id.* at 561. The outer boundaries of a given tribe's reservation have served to define the tribe's principal jurisdiction, with the interior of the reservation as its governed territory.

This Court's attention to the geographical aspect of tribal political integrity has not waned with the passing of time. While acknowledging that the reservation boundary is not always congruent with tribal sovereign powers, the Court, noting the history of its jurisprudence on this matter, has observed that, "The cases in this Court have consistently guarded the authority of Indian governments over their reservations." *White Mountain Apache Tribe*, 448 U.S. at 151, quoting *Mazurie*, 419 U.S. at 558. In the context of tribal court jurisdiction the Court has held that, "Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty. . . . Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty or federal statute." *LaPlante*, 480 U.S. at 18. Congress has passed no statute restricting the jurisdiction of the Tribal Court here.

The Eighth Circuit improperly determined first, that *Montana* applies to this case and second, that the conduct

at issue in the underlying action here does not threaten or directly affect the political integrity of the Tribe. This Court's precedents and Congressional enactments affirming the federal policy favoring tribal self-government and self-determination demonstrate that the conduct at issue here threatens and directly affects the health, welfare and political integrity of the Tribe.

CONCLUSION

For the foregoing reasons, the Supreme Court should reverse the Eighth Circuit's en banc decision and affirm the Eighth Circuit panel decision. If the Court determines that the rule in *Montana* applies to this matter, the Court should reverse the Eighth Circuit's en banc decision and affirm the Eighth Circuit panel decision on the grounds that the conduct at issue in the underlying action threatens and directly affects the health and welfare of the Tribe and the political integrity of the Tribe.

Respectfully submitted,

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